



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Highway Users Tax Account

DATE: June 18, 2009

RECOMMENDATION

Adoption of a resolution authorizing the City Attorney to cooperate with the League of California Cities, other cities and counties in litigation challenging the constitutionality of any seizure by state government of the city's street maintenance funds from the Highway Users Tax Account (HUTA) and directing other related actions.

BACKGROUND

Since the early 1990s the state government of California has seized over **\$10 billion** of city property tax revenues statewide, now amounting to over \$900 million each year, to fund the state budget even after deducting public safety program payments to cities by the state. In his proposed FY 2009-10 budget, the Governor has proposed transferring \$1 billion of local gas taxes and weight fees from the HUTA to the state general fund to balance the state budget, and over \$700 million in local gas taxes permanently in future years, immediately jeopardizing the ability of the City to maintain the City's streets, bridges, traffic signals, streetlights, sidewalks and related traffic safety facilities for the use of the motoring public. In both Proposition 5 in 1974 and Proposition 2 in 1998 the voters of our state overwhelmingly imposed restriction on the state's ability to do what the Governor has proposed, and any effort to permanently divert the local share of the gas tax would violate the state constitution and the will of the voters.

ANALYSIS

The California League of Cities has obtained a legal opinion from Nielsen, Merksamer, Parrinello, Mueller & Naylor concerning the unconstitutionality of the Governor's proposal related to Governor's proposal regarding the HUTA funds. It is their opinion that the most reasonable interpretation of the relevant constitutional provisions is that the reallocation to the state of the cities' and counties' allocation under HUTA would violate Article XIX, sections 3, 5, and 6 of the California Constitution. In the attached memo to City Officials the League is urging cities to consider passing resolutions authorizing their city attorneys to cooperate in the planning of litigation against the state if they proceed with this action. The League's memo notes that the Council should consider the adoption of the proposed resolution in light of the fact that the loss of

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almost all of the City's gas tax funds will seriously compromise the City's ability to perform critical street maintenance, including, but not limited to, drastically curtailing patching, resurfacing, street lighting/traffic signal maintenance, payment of electricity costs for street lights and signals, bridge maintenance and repair, sidewalk and curb ramp maintenance and repair, and more.

The proposed resolution directs the City Clerk to send a copy of the resolution with a cover letter from the Mayor to the City's representatives in the State legislature informing them of the City's adamant resolve to oppose any effort to frustrate the will of the electorate as expressed in Proposition 5 (1974) and Proposition 2 (1998) concerning the proper use and allocation of the gas tax. Additionally, the proposed resolution also directs the City Clerk to send a copy of the resolution to the League and to the San José Chamber of Commerce.



RICHARD DOYLE
City Attorney

Attachment

cc: Debra Figone
Lee Price



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TO: City Officials
FROM: Chris McKenzie, Executive Director
RE: Sample Resolutions RE: Unconstitutional Diversion of Local Share of Motor Fuel (Gas) Tax **and** Redevelopment Tax Increment
DATE: Tuesday, June 16, 2009 (UPDATED SINCE LAST FRIDAY)

Background. Recently the Legislative Budget Conference Committee has approved two unconstitutional seizures of local revenues to fund the state budget. We wrote you last Friday about the first--the Governor's proposal to take almost \$1 billion in city and county shares of revenues in the Highway Users Tax Account (HUTA) from the motor fuel tax (or gas tax) next year (\$700 million the following year) to fund past and future highway bond debt service payments out of the general fund. The second, approved yesterday, is to seize \$350 million in redevelopment tax increment from local RDAs over the current and the next two fiscal years.

It is clear to attorneys retained by the League and CRA that these actions, if enacted into law, would be unconstitutional. The attached legal opinion from the Sacramento law firm of Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, sets forth the legal analysis and conclusion concerning the invalidity of the gas tax raid. In addition, a recent Sacramento Superior Court decision, now on appeal, found that last year's attempted diversion of the redevelopment tax increment violated Article XVI, Section 16 of the California Constitution. The same result is expected in any future lawsuit to challenge the recently-approved raid.

Sample Resolutions. The League has developed two sample resolutions (attached) for cities that wish to cooperate with the League, California Redevelopment Association, other cities, counties and redevelopment agencies in planning litigation challenging the constitutionality of the proposed theft of local gas tax funds (**Sample 1**, sent last Friday) and the theft of both the gas tax and the redevelopment tax increment (**Sample 2**). Neither commits the city nor agency to filing litigation, but the resolutions direct the city attorney (and agency general counsel) to cooperate and work with the League (and CRA) and other local governments to advance the litigation.

If litigation proves necessary in the next month or so, we anticipate there will be some lead cities and counties, along with the League (and CRA). It may eventually prove desirable to have every interested city (and agency) named in the litigation. As a result, asking your city attorney (and agency general counsel) to get engaged and cooperate in the planning of this possible next step is appropriate and to send the message you will not take this lying down.

Your City's Gas Tax and Redevelopment Loss. For your city's 2009-10 gas tax loss see <http://www.californiacityfinance.com/HUTAprjFY10.pdf>. Under the Governor's proposal, approved by the Budget Conference committee, your city would lose this entire amount. In the next year, the loss would be about 75% of this amount. For your redevelopment agency's estimated annual loss see <http://www.calredevelop.org/AM/Template.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=4665>.

Where to Send Copies. The draft resolution directs that copies of the resolution be sent to your legislators, the Governor, the League, CRA, and various community groups that care about traffic safety and redevelopment in your city. We would appreciate you faxing copies to both your League Regional Public Affairs Manager, the League's Sacramento Office (Fax 916-658-8240) and the California Redevelopment Association's office. (Fax 916-448-9397).

News Release. Your League regional public affairs manager will be sending you a draft news release for the city to issue after the adoption of one of the resolution. It is important that the news media know your city and redevelopment agency will fight these unconstitutional proposals.

Questions. If you have any questions or need any information, please contact your League Regional Public Affairs Manager. City attorneys should contact Patrick Whitnell, League General Counsel, at pwhitnell@cacities.org. Redevelopment agency staff should contact the CRA at 916-448-8760.